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Chairman: Mr. Tomka ..... (Slovakia)

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The meeting was called to order at 3.10 p.m.

Agenda item 147: Report of the International Law Commission on the work of its forty-ninth session (*continued*) (A/52/10)

1. **Mr. Da Fontoura** (Brazil) said that the "preliminary conclusions" on reservations to normative multilateral treaties, presented by the International Law Commission in paragraph 157 of its report (A/52/10), tackled two essentially interrelated problems: the problem of the unity or diversity of the juridical regime for reservations (conclusions 1 to 3) and the problem of the monitoring bodies established by human rights conventions (conclusions 4 to 12).

2. With respect to the first problem, his delegation agreed with the Commission that the Vienna regime was flexible enough to apply to all multilateral treaties. There was therefore no need at present to establish a regime specific to some normative treaties, including human rights treaties, even if there were lacunae and ambiguities in the Vienna regime. That flexibility was based essentially on the prohibition on the formulation of a reservation incompatible with the object and purpose of the treaty, even though, paradoxically, the provisions containing that prohibition were the ones most often mentioned as the cause of controversies over the admissibility of reservations. However, the virtues of the prohibition far exceeded its disadvantages.

3. The second problem, the role and the capacity of the monitoring bodies established by human rights treaties, also gave rise to lively debate, in which there seemed to be two conflicting positions. The traditional prudent approach of avoiding conferring any additional competence on the treaty bodies was manifested in the practice of States. The parties to human rights treaties tended to be very conservative in their reactions to reservations formulated by other States. The other position was to favour a rapid evolution of international law and international institutions in that area.

4. The members of the existing monitoring bodies were not representatives of Governments but experts acting in their personal capacity. That was part of the reason why the deliberations of such bodies were guided by criteria which were considerably more ambitious than the ones used by States. In any case, the bodies had a consultative function, and the determination of the permissibility of reservations was a prerogative of States. The monitoring bodies could express an opinion on the permissibility of a reservation but they could not declare it null and void or draw the consequences of their determination.

5. Turning to chapter VIII of the report, entitled "Diplomatic protection", he said that his delegation welcomed the Commission's decision to include the topic in its agenda and endorsed its solution to the question of the definition of the scope of the topic. It was important to limit it to secondary rules of international law in order not to waste too much time on less important questions, such as the specific content of the international legal obligation which had been violated.

6. The nature and definition of diplomatic protection was the most difficult aspect to be tackled by the Commission. According to the traditional doctrine, diplomatic protection could be exercised only under certain conditions connected with (a) the nationality of the claimant, (b) the exhaustion of local remedies, and (c) the previous conduct of the claimant (the "clean hands" rule). The Commission would have to study that point very carefully, for it required further clarification, as well as the functional protection applicable to agents of international organizations.

7. As to the outline of the content of the topic of diplomatic protection, item A4 would have to be supplemented by a detailed study of the denial of justice and its relationship to the exhaustion of local remedies.

8. One of the most interesting aspects of the unilateral acts of States, which was the subject of chapter IX of the report, an aspect much disputed in the doctrine, was the question of the inclusion or exclusion of such acts from the list of sources of international law. Article 38 of the Statute of the International Court of Justice and many contemporary authors made no mention of unilateral acts, since they were not norms but merely juridical acts. Other authors considered that they were only instruments of execution, which did not create general rules. But that was not always the case. Internal acts could produce international effects, such as the determination of the extent of maritime jurisdiction (territorial sea, ports regime, access by other Powers to the national waters of a State). It seemed difficult to deny the status of source of international law to such unilateral acts. The Commission should devote some time to consideration of that question.

9. Chapter IV of the outline proposed by the Commission contained the most important issues of all. It addressed the action of States and was concerned mainly with questions related to the practice of States, whereas the three preceding chapters were more doctrinal in nature. Whatever the final form of the results of the Commission's work, it was to be hoped that the end product would be more than just a doctrinal report. States would probably be more interested in item (b) on effects, item (d) on conditions of validity, and

item (e) on consequences of the invalidity of an international legal act. With regard to the effects, the views of the Commission on the "creation of rights for other States" and "situations of opposability and non-opposability" were of special interest to his delegation. As for the conditions of validity, the list of elements proposed by the Committee in its outline was sufficient. His delegation stressed the importance of a detailed analysis of the topic of the lawfulness of unilateral acts under international law. With regard to the scope of the subject, it welcomed the Commission's decision to exclude from the purview of its study unilateral acts committed by other subjects of international law, in particular by international organizations. That topic deserved individual treatment and should be the subject of future work.

10. Turning to chapter IV of the report, on nationality in relation to the succession of States, he noted with satisfaction that the Commission had kept constantly in mind the protection and promotion of human rights in its work on the draft articles under consideration, which it analysed in detail.

11. The preamble and the operative part were well-balanced and well-structured. The division of the draft articles into two parts, one containing general provisions and the other dealing with their application to specific types of succession, was a wise solution. Indeed, articles 20 to 26 were an indispensable complement to the provisions of part I, and their application without any qualification would be highly problematic.

12. Article 1 stated the principle on which the other provisions were based. The right to a nationality had already been established, not only in the Universal Declaration of Human Rights but also in the conventions on nationality and statelessness. Article 3, which stated the obligation of States involved in a succession to take all necessary measures in order to prevent statelessness, provided an adequate complement to article 1.

13. The Commission had been wise to include in article 4 a provision on the presumption of nationality. Indeed, recent cases of temporary statelessness due to the time-lag between the date of the succession of States and the adoption of legislation or the conclusion of a treaty between States had caused serious difficulties for the individuals concerned. Articles 7, 8 and 9 dealt with essentially practical problems. Even if at first sight they seemed dispensable, by including them the Commission had wished to signal clearly that certain State prerogatives remained valid for States involved in a succession.

14. His delegation welcomed the adoption of draft article 13, which provided that the status of persons concerned as habitual residents should not be affected by the succession of States as such and provided for the right of persons who, because of events connected with the succession of States, had been forced to leave their habitual residence, to return thereto.

15. Turning to chapter VI, on the topic of State responsibility, he recalled that, the previous year, his delegation had drawn attention to the important decision taken by the Commission to base its work on the premise that every internationally wrongful act by a State entailed the responsibility of that State. It had then gone on to say what constituted an internationally wrongful act, under what conditions such act should be attributed to a State, which circumstances precluded wrongfulness, and the legal consequences of a wrongful act. With regard to the Commission's future work, the Brazilian delegation welcomed the adoption by the Commission of its plan of work for the quinquennium. It was important, however, to accelerate the process of deliberations so that the second reading of the draft articles could be completed by the end of the mandate of the current members of the Commission.

16. During the forty-ninth session, the Working Group of the Commission on international liability for injurious consequences arising out of acts not prohibited by international law (chapter VII) agreed that international liability would be the core issue of the topic. His delegation fully supported that decision. On the Working Group's recommendation, the Commission had decided to undertake first prevention under the subtitle "Prevention of transboundary damage from hazardous activities". While it did not oppose that decision, his delegation believed that the Commission should also have as a priority a thorough consideration of the questions of liability and reparations, and especially the problem of compensation.

17. On the occasion of the commemoration of the fiftieth anniversary of the Commission, Brazil wished to reiterate its support for the Commission's work. In cooperation with the Secretariat, it would organize in 1998 the fourteenth Gilberto Amado Memorial Lecture, dedicated to the memory of the Brazilian jurist and former member of the Commission. The Brazilian Government, through the Fundaçcão Alexandre de Gusmão, had also decided to publish all previous Gilberto Amado Memorial Lectures.

18. **Mr. Sergiwa** (Libyan Arab Jamahiriya) said that he wished to comment on chapters V and IX of the report under consideration (A/52/10). With regard to chapter V, on the topic of Reservations to treaties, his delegation was of the

view that the achievements codified by the regime of the Vienna Conventions should be preserved, since they established a satisfactory balance between conflicting schools: on the one hand, they expanded the scope of multilateral treaties by permitting as broad as possible a participation while at the same time allowing States to make reservations to some of their provisions; on the other hand, they preserved the spirit of the treaties by prohibiting the formulation of reservations that were incompatible with their object and purpose.

19. Libya agreed with "Preliminary Conclusions" 1, 2 and 3 presented in paragraph 157, which reaffirmed the flexibility and adaptability of reservations. The Vienna regime applied to all normative multilateral treaties, including human rights treaties. It must be borne in mind that reservations were a sovereign right of States, which expressed in that way their opposition to certain provisions that were incompatible with their internal law or with their interests, without, however, impairing the very core of the treaty in question. For their part, it was not the role of monitoring bodies to determine the admissibility of reservations. That was a decision for the States concerned to make. Their functions should be limited to monitoring the implementation of treaty provisions and to making recommendations.

20. The Commission would consider the topic of Unilateral acts of States at its next session. Libya welcomed that decision, since the topic was a very important one and one that was well suited to codification and progressive development. Certain States adopted internal laws which had extraterritorial effects, imposing restrictions and economic sanctions on other States, in violation of the sovereign rights of such States, and hindering the efforts of the international community to achieve peace, security and development. In view of the proliferation of such unilateral acts of States, the Libyan delegation hoped that the Working Group's efforts would be fruitful and that it would succeed in establishing the legal foundations for addressing the economic impact of such unilateral acts.

21. **Mr. Morshed** (Bangladesh) said that he wished to state his Government's views on chapters IV, V, VII and IX of the report of the International Law Commission on the work of its forty-ninth session (A/52/10).

22. With regard to chapter IV, on the topic of Nationality of natural persons in relation to the succession of States, the draft articles adopted on first reading seemed to provide a viable structure for the development and codification of that difficult topic. However, with regard to the categories of succession of States, the parties concerned were likely to consider the question of succession and determine the category of succession in very different terms and with very different juridical consequences. His delegation therefore wondered whether it was desirable to mention the different categories of succession of States in Part II, since the situation being dealt with must be determined before the articles presented in Part I could come into play.

23. On the other hand, it was a source of satisfaction to note that the draft articles gave considerable weight to individual choice in the determination of nationality. That role could be expanded to prevent cases of statelessness, which must remain one of the principal concerns in cases of succession of States. Since, on the subject of nationality in relation to the succession of States, there were major differences between national systems on the one hand and international law on the other, it would be preferable for the topic to be the subject of a convention rather than a declaration, so that States would accept not only each of its provisions, but also the overall conception of the topic.

24. Turning to chapter V, on the topic of Reservations to treaties, his delegation was not in a position to subscribe to all the "Preliminary Conclusions" of the Commission (paragraph 157). It agreed with other delegations which had spoken previously that it was necessary to preserve the integrity and unity of the Vienna regime and that that regime should apply to all treaties, including normative multilateral treaties, and especially human rights treaties. But, on the subject of the role and possible competence of treaty monitoring bodies, it shared the view of those who believed that the Commissions's Conclusions were premature and unjustified. Reservations to human rights instruments were deeply rooted in differing conceptions of the role of such instruments. Notions, such as "normative treaty" and in particular "object and purpose of the treaty" were much more effective references to determine the admissibility of a reservation. That task should be entrusted to duly constituted institutions which had explicit mandates.

25. Turning to chapter VII, on the topic of International liability for injurious consequences arising out of acts not prohibited by international law, he hoped that the Commission would be inspired by the positive spirit which had enabled it to complete the draft articles on non-navigational uses of international watercourses. It might not necessarily be a bad idea to take up the topic of prevention, provided that it did not limit the scope of the work and that the Commission did not lose sight of the subject of the study.

26. The outlines of the topics on diplomatic protection (chapter VIII) and unilateral acts of States (chapter IX)

established by the Commission were useful points of departure.

27. In conclusion, his delegation wished to refer once again to the questionnaires prepared by the Commission, noting that they did not necessarily encourage dialogue. Governments were rightly hesitant to express positions which might be opposable to them, particularly in the formative stages of work on a particular topic. Less formal exchanges of views would be preferable and would certainly accelerate the responses of Governments. The Commission should explore ways and means of making the dialogue more fruitful.

28. **Mr. Holmes** (Canada) pointed out that State responsibility was an extremely important topic, which was interlinked with certain key elements of international law. Canada took note of the Commission's intention to accord it the necessary priority in order to complete the second reading by the end of the quinquennium. While adherence to time-frames was important, it must be borne in mind that codification in that area required careful attention. Sharing the concerns expressed by some delegations, his delegation questionned the congruity of article 19 with customary international law regarding the concept of "State crime", and the system of countermeasures, arbitration and conciliation and its potential effect on existing treaties. As difficult as the area was, his delegation was confident that the new Special Rapporteur, Mr. James Crawford, would handle it with his customary skill.

29. His delegation welcomed the Commission's work on the issue of international liability for injurious consequences arising out of acts not prohibited by international law (chap. VII, paras. 162 to 168). It was a complex subject linked to that of State responsibility. His delegation supported the Commission's approach in treating the prevention of transboundary damage from hazardous activities, as a separate issue, which would greatly facilitate the conduct of its work.

30. The proposed draft articles were based on the principle of customary international law which established the obligation to prevent or mitigate transboundary damage arising out of activities that were under the control of a State. His delegation accepted the principle, as established in the *Trail Smelter* case and welcomed its codification by the Commission.

31. The existence of harm was a prerequisite for the establishment of liability. However, the question of whether liability should flow from the mere existence of harm or from conduct reflecting a lack of diligence might be better determined by the nature of the activity and the risk it posed. With regard to reparation, his delegation agreed with the Commission that reparation was preferable to compensation in the case of environmental damage.

32. The remaining draft articles were consistent with what national and international environmental assessment should be. Regarding the future development of the draft articles, it would be desirable to permit States to override them where they dealt with specific issues of liability with respect to which a treaty was being negotiated. The general issue of relationship with existing treaty law in the field of international liability must also be addressed.

33. His delegation supported the Commission's decision to pursue its work on diplomatic protection, which was dealt with in chapter VIII of its report. It would be useful to have guidance on it, particularly with regard to dual or multi-nationality. The study should be confined to the codification of secondary rules, but the Commission could also consider the protection claimed by international organizations for the benefit of their agents. It should be made clear in the reports on that question, however, that "functional" protection was distinct from the protection claimed by States and flowed from a different basis.

34. His delegation was in favour of the study on the topic of unilateral acts of States (chap. IX). In view of the current state of customary international law, it would be helpful to clarify the rules governing the creation of rights and obligations by unilateral acts of States intended to produce legal effects.

35. Even though the need to hold a split session in 1998 had been dictated by extraneous circumstances, his delegation was nonetheless convinced that it would be fruitful. Convening one of the split sessions in New York in 1998 would help to offset some of the costs and would establish closer linkages between the work of the Commission and that of the Sixth Committee. It would be useful, for example, to hold informal briefings and meetings during that segment; that would also strengthen the dialogue between the Sixth Committee and the International Law Commission. Nonetheless, Canada welcomed the fact that the Commission had decided to reduce the duration of its sessions to 10 weeks. A longer session might be considered during the final year of the quinquennium.

36. **Mr. Choung-il Chee** (Republic of Korea), referring first to chapter VI of the report, entitled "State responsibility", congratulated the Commission on its outstanding work and said that his Government would submit its written comments on that topic by the deadline of 1 January 1998.

37. Regarding chapter VII, on "International liability for injurious consequences arising out of acts not prohibited by international law", he said that he had often wondered whether that title was accurate, since liability implied a measure of guilt; however, he was prepared to accept it for the time being. On the other hand, he wished to stress how urgent it was for the Commission to adopt the draft articles elaborated on that topic, in view of, in particular, the forthcoming session of the conference on climate change to be held in Kyoto.

38. Referring to the Commission's decision to treat two questions, those of prevention and liability, within the framework of that topic, and, in particular, to make the latter the core issue of its study, he said that he accepted that approach but that, with regard to the first question, the Commission should set its sights slightly higher and discuss the duty of States with regard to prevention. In that connection, too, his Government would submit its written comments in due course.

39. With regard to chapter VIII, entitled "Diplomatic protection", his delegation supported the intended scope of the Commission's study. It was concerned, however, about the problems the Commission might encounter in its consideration and codification of the rule of exhaustion of local remedies, in view of the diversity of national practice in that field. His delegation hoped, nonetheless, that the Commission would be able to produce a uniform codification of the applicable rules in that area.

40. Turning to chapter IX, entitled "Unilateral acts of States", he said that what was of interest in international law was not acts of States in themselves but rather their consequences. Referring to the opinion handed down by the International Court of Justice in 1951 in the Norwegian fisheries case, he said that, while States obviously had freedom to act, the validity of their acts depended on international law and, as such, must be determined by a court or by the affected States, whence the importance of a precise definition of such acts by the Commission. In that connection, he supported deleting the word "legal" from the new title proposed by the Commission, as the term wrongly implied that such acts did not necessarily have legal value in customary international law.

41. Lastly, referring to chapter X, entitled "Other decisions and conclusions of the Commission", he said that the Commission's proposed work programme for the remainder of the quinquennium was too ambitious. In his delegation's view, it would be better for the Commission to confine itself to a limited number of questions on which it could complete its work within the established time-frames.

42. **Ms. Fernández de Gurmendi** (Argentina) said that the importance of the codification of international law on State responsibility and the usefulness of the work so far conducted by the Commission in that area could not be overemphasized. The completion of that work was a priority, and her delegation would make every effort to contribute thereto by submitting its comments to the Special Rapporteur in good time.

43. Her delegation also emphasized the importance of the topic of international liability for injurious consequences arising out of acts not prohibited by international law, the title of which attested to its great complexity. She endorsed the Commission's decision to proceed in stages, and to first consider the question of the prevention of transboundary damage from hazardous activities, and then the question of international liability itself, to determine whether the applicable regime was ad hoc or whether it formed part of the general regime governing State responsibility.

44. Turning to chapter VIII of the report, on diplomatic protection, the institution of the law and legal tradition being of a particular importance and nature in Latin America, she recalled the contribution to the study of that area of law by Messrs. Drago and Calvo, Argentine jurists, who had sought to ensure that diplomatic protection did not serve as a pretext for interference in the internal affairs of States. Recent developments in the international system had in no way diminished the importance of that fundamental concern, which was very delicate in political terms, and conditions for the exercise of which, in particular the rule regarding the exhaustion of local remedies, remained strictly applicable.

45. Recent international events had lent a new dimension to the role and rights of individuals, rendering futile the legal fiction on which diplomatic protection rested and which it was important to keep in mind in reconciling the interests of all the parties involved from the standpoint of the codification of that area of international law.

46. Turning to unilateral acts of States, dealt with in chapter IX of the Commission's report, she said that State practice and international jurisprudence justified codification of the area by the Commission, particularly since it was of particular importance for the legal security and the stability of international relations. The Commission should first clearly define the scope of its study, which should be confined to unilateral legal acts, and should exclude acts which had no legal effects and wrongful acts, which fell under State responsibility. The Commission had rightly set aside for the time being the very different acts of international organizations, leaving open the possibility of reverting to the topic later.

47. **Mr. Pfirter** (Observer for Switzerland) said that the topic of diplomatic protection (chapter VIII) was an area that was very difficult to codify, as had been the experience of the Commission in the past. The analysis of the topic to be undertaken by the Working Group entrusted with the preliminary study gave an indication of the controversies which were likely to emerge, starting with the scope of the topic and the manner in which it should be subdivided.

48. Firstly, with regard to the scope of the topic, the study should not extend to the protection offered to international organizations, so as not to complicate the Commission's task. As for the diplomatic protection of corporations and associations, his delegation still had some doubts and emphasized that differences in practice and doctrine were such that that extremely controversial area was far from being amenable to codification.

49. On the content of the topic, the Commission must ensure that its study on diplomatic protection, a topic limited to the secondary rules of international law, did not extend to the substantive rules of international responsibility. It was in no way necessary, or even possible, to prove internationally wrongful behaviour to justify the exercise of diplomatic protection, contrary to the indication in the Commission's report, since the existence of such behaviour was a substantive problem. The only obligation to be placed on the protecting State was that it must allege an internally wrongful act. Similarly, if nationality or the exhaustion of local remedies were points which undoubtedly related to the diplomatic protection of shareholders and other company officials, the question of establishing whether such persons had a right protected by international law and that of whether that right had been infringed by an international delict were substantive. The same reasoning applied to insurers subrogated for holders of an internationally protected right, as well as in the case, not mentioned expressly, of creditors and trustees.

50. Regarding the heading "Legal persons", which his delegation did not wish to see considered by the Commission, he said that that term referred to corporations and associations under local law and partnerships. It was far from certain that those two categories embraced every kind of legal person. Moreover, under some national legal orders partnerships had no legal personality and were not legal persons.

51. With regard to the heading "Non-nationals forming a minority in a group of national claimants", he asked whether that wording meant that the protecting State would be empowered to endorse claims by either and whether, with regard to a national corporation, it would have the right to intervene on behalf of foreign shareholders of that corporation, which he found disquieting.

52. Turning to chapter IX, on unilateral acts of States, Switzerland approved in principle of the Commission's intention to take up the question. Its conclusions regarding the scope of the topic should have indicated more clearly that the Commission was interested only in acts deliberately intended to create by themselves a normative effect and was thus excluding legal acts, and dependent unilateral legal acts, such as acceptance by a State of a stipulation appearing in a treaty on behalf of another, which were already covered under the law of treaties, and derived unilateral acts able to produce a normative effect but only on the basis of an earlier treaty. That latter category should not be set aside, since it was of undeniable practical interest in the context in particular of the question of the rules of interpretation to be applied to declarations of acceptance of the competence of the Hague International Court of Justice. On the other hand, the decision of the Working Group to exclude unilateral acts by subjects of international law other than States, in particular intergovernmental organizations, seemed sound.

53. He was concerned by the overlapping in the outline proposed by the Working Group on unilateral acts. The wording of the title of chapter IV on the rules of interpretation applicable was too terse and the title of chapter III on other acts was too vague. The heading should include the derived unilateral legal acts which were to be covered.

54. **Mr. Pellet** (Chairman of the International Law Commission) summarized the discussion in the Sixth Committee of chapters VI to IX of the report of the International Law Commission on the work of its forty-ninth session (A/52/10) and on several questions of a more general nature.

55. With regard to the topic of State responsibility, a large number of delegations seemed to think that the work should be completed and the second reading of the draft finished by the end of the quinquennium. That was also the Commission's view. The delegations which had expressed their views on that score had made the same observations as the Commission on the three aspects of the topic which appeared to be the most problematic — crimes, countermeasures and the settlement of international disputes. Some of those delegations had made detailed observations, and he could state with confidence, on behalf of the Special Rapporteur, that their comments would be given careful consideration.

56. With regard to the second topic, international liability for injurious consequences arising out of acts not prohibited by international law, he would simply take note of the

relatively restrained passions which the topic continued to arouse 20 years after its inclusion in the Commission's agenda. After noting that no delegation had challenged the decision to eliminate, as a first step, the aspect of the topic dealing with prevention, he drew attention to the need for guidelines from delegations concerning the other aspects, which must be forthcoming within the following two years; otherwise, he failed to see how the Commission could break out of the impasse in which it had been mired for 20 years.

57. With regard to the new topics, unilateral acts of States and diplomatic protection, he noted, to his satisfaction and relief, that with one exception, no delegation had questioned the appropriateness of studying them. He had taken note of the interest aroused by those topics and did not doubt that the special rapporteurs would pay close attention to the comments, often detailed and quite interesting, which had been made.

58. Turning to the question of the role and functions of the Commission, he took exception to the veiled criticism of the members of the Commission made by one delegation which had questioned their independence. The members of the Commission had given sufficient proof of their independence to be undeserving of offensive remarks.

59. It appeared, moreover, that the fifty-second session of the General Assembly, which had, fortunately, coincided with a colloquium held to mark the fiftieth anniversary of the Commission, had been a fertile source of ideas and constructive proposals regarding the role of the Commission and its relationship to the Sixth Committee, and had even resulted in some promising developments. He congratulated the Secretariat on the success of the colloquium, which would continue in April, with the colloquium to be organized jointly by the Commission, the Geneva Graduate Institute of International Studies and the Government of Switzerland. The second meeting would probably focus more on an examination of the Commission's achievements.

60. Among the positive innovations of the current session, he noted, first, the informal meeting held between members of the Commission and of the Sixth Committee. That experience should be followed up, perhaps even by meetings devoted to specific items on the agenda, as proposed by two delegations. That idea, however, while interesting, might run afoul of the fact that most of the special rapporteurs concerned were absent during meetings of the Sixth Committee.

61. He welcomed the consensus which appeared to be emerging on the need to strengthen the links between the Commission and the Sixth Committee and between the Commission and bodies concerned with the codification and progressive development of international law, including national bodies and scholarly organizations.

62. With regard, once again, to the working methods of the Commission, delegations had made three specific proposals which appeared to enjoy a certain amount of support. The first proposal was to request the Commission and its special rapporteurs to shorten and simplify the questionnaires. While fully aware of the difficulties which some States encountered in answering the questionnaires and the burden which that imposed on them, he emphasized that the topics addressed by the Commission were complex and that short answers to simple questionnaires would not be very useful. General policy questions concerning the approach to be taken to a topic were a different matter. In such a case, the questions could be fairly brief, as it was a matter of getting a sense of States' preferences. Where complex facts were involved, however, the questionnaires would inevitably be complex. Moreover, it was unclear why Governments would hesitate to reply on the ground that they might commit themselves by answering. That argument did not apply in cases where the questionnaires dealt with facts and observable practice, as with the questionnaire on reservations to treaties.

63. The second proposal was to request the Secretariat to translate and circulate in advance chapters II and III of the report of the Commission. That proposal was very useful and could be implemented very easily.

64. The third proposal required an amendment to the Statute of the Commission. In that connection, he emphasized the need to change the method of electing new members of the Commission, and to do so before the end of the current quinquennium, in 2001, so as to avoid overly abrupt changes. He noted, however, that the members of the Commission themselves did not hold unanimous views on the matter.

65. With regard to the duration of the sessions of the Commission and the possibility of holding split sessions, some delegations had stated that the sessions should be proportional to the workload. One delegation had suggested that if the Commission wished to extend its session, it should explain the reasons. While believing that those two requirements were justified in principle, he wondered whether the second one was not based on an erroneous assumption. The Commission's session normally lasted 12 weeks. It was only because of the financial difficulties of the Organization and the relative light workload of the forty-ninth session that the Commission had spontaneously proposed to reduce that session to 10 weeks. The very heavy workload of the fiftieth session amply justified an 11-week session, one week shorter than usual. The fifty-first session

would have an even heavier workload; its calendar, which had been approved by all delegations, contained six sets of draft articles. Thus, while a return to 12 weeks was amply justified, that did not mean that 11-week or 10-week sessions could not be held later, if the workload permitted.

66. With regard to the split fiftieth session, he recalled that the purpose of that initiative had been to ease the pressure on the special rapporteurs during the second part of the session and to facilitate the adoption of commentaries, which generally took place in a hasty and even improvised manner. The split session would also enable all members of the Commission to devote a reasonable period of time to reading those essential and fairly long texts and preparing their replies. In order to test that solution, the fiftieth session would be held in two parts. It was deeply regrettable, however, that the dates and venues had been imposed on the Commission, rather than being chosen by most of its members, which would have been ideal.

67. The Chairman said that the Committee had concluded its consideration of agenda item 147.

The meeting rose at 4.45 p.m.